

**Charter Township of Elmwood  
Zoning Board of Appeals  
Regular Meeting  
June 2, 2021  
7:00 PM  
Approved 10/06/2021**

**A. CALL TO ORDER:** Jeff Aprill called the meeting to order at 7:08 p.m.

**B. ROLL CALL:** Jim O'Rourke-Elmwood Township, Leelanau Co., Ray Haring- Elmwood Township, Leelanau Co., Jason Razavi-Elmwood Township, Leelanau Co., Jeff Aprill- Elmwood Township, Leelanau Co.

Absent: Gary Bergstrom

**C. PUBLIC COMMENT:** None

**D. AGENDA MODIFICATIONS/APPROVAL: MOTION BY JIM O'ROURKE, SECONDED BY RAY HARING TO APPROVE THE AGENDA AS PRESENTED.**

**ROLL CALL VOTE: AYE-JEFF APRILL, RAY HARING, JASON RAZAVI, JIM O'ROURKE  
MOTION PASSED.**

**E. DECLARATION OF CONFLICT OF INTEREST:** None

**F. APPROVAL OF MINUTES: MARCH 29, 2021: MOTION BY JIM O'ROURKE, SECONDED BY RAY HARING TO APPROVE MINUTES OF MARCH 29, 2021. ROLL CALL VOTE: AYE-JIM O'ROURKE, JEFF APRILL, JASON RAZAVI, RAY HARING. MOTION APPROVED 4-0.**

**G. NEW BUSINESS:**

- 1. ZBA 2021-03 Request by JML Design Group on behalf of Ginette Gomez to expand a non-conforming use damaged by fire at 810 S Lakeview Rd. Parcel #45-004-101-022-00 in the Residential 1 Zoning District. This request is to reconstruct a non-conforming use, single family dwelling (there are 2 dwellings on the property) and increase the height of the structure by 10'-6" to 29'-6' from 19'.**

Staff noted there use to be two dwellings on the property, but one of them burnt down and that is the one they are looking to rebuild at this time. According to the Zoning Ordinance, that's a non-conforming use because they only allow for one dwelling per property. In discussion with the attorney in how the ordinance is drafted, they can rebuild on the same footprint at the same height as what exists there with just a land use permit. Their request is to go up, add a second story, and that's where the request comes in as a variance from the non-conforming section of the ordinance. The house would be compliant with the height restrictions in the township which is 35' but because it is a non-conforming use, they are essentially asking to expand that non-conforming use. Typically, she told the applicant, they have a 5 member board, and with the 5 member board they would need 3 votes in favor of the variance request. Because there were only 4 members present, they still need 3 votes so she gave the applicant the option to wait for a 5 member board or they could move forward.

Fred Campbell said they would move forward. He said he was there to present to the Board a request to; with a total loss with the fire of one residence, the second residence was kept intact. The Ordinance allows them to go to the Zoning Administrator and obtain a land use permit if there wasn't a second house on the property. Because the second house is on the property, it's a non-conforming site and therefore the Ordinance says if they simply build in the same footprint, at the same volume, they need a land use permit. What they are asking to do is to increase the height of the building but build exactly on the same footprint that was there before so they are not deviating from the existing footprint, they are simply asking to add a loft and second floor to the residence. That requires the Zoning Board of Appeals approval and if you look at the Ordinance it basically asks the ZBA to make the determination that the non-conformity is not being expanded so what they are asking to do fits within the Ordinance in that they're not technically asking for a variance, they're not asking for a 10'5" variance to the Ordinance, they're building within the footprint, just asking to go higher and stay within the Ordinance requirement of 35'.

Jeff Aprill asked if the existing footprint meets the setback requirements.

Fred answered what was depicted on the drawings is exactly the footprint that was there prior to removing the foundation

Jeff Aprill said the real issue that was before them was 2 dwellings on one lot. He didn't believe the Township ever allowed for that, so the second dwelling was a garage that was converted or whatever, so it's not only a non-conforming, but an illegal non-conforming and asked if that was correct.

Fred replied yes however his client purchased the property as it was and did not create the problem, he did not build the second residence. To his knowledge, it was the original owner who built the second building or converted it.

Steven Vreeken said Vince Meyer, the contractor, said that was his childhood home. The house that did not burn down is the original house that was built in the 50's and the house that burnt was built in the late 60's or early 70's.

Jim O'Rourke had the assessing card and it showed the house that was still standing was built in 1968 with its own septic and well.

Staff said according to the assessing records, both homes were built in 1968 which was before zoning. Because they were built prior to zoning, it would be considered legal non-conforming.

No public comment was given, but staff did receive an e-mail from Rick Howard with no objection.

The ZBA members deliberated and asked questions and went through Findings of Fact particularly referring to 10b.

Fred asked for the consideration due to Covid, building supplies, and contractor availability, could they have an extension.

Staff said she would evaluate it; essentially you have 2 years to rebuild.

**MOTION BY RAY HARING SECONDED BY JASON RAZAVI TO APPROVE THE REQUEST OF A 10'6" HEIGHT VARIANCE ON THE NEW DWELLING. ROLL CALL VOTE: AYE-JIM O'ROURKE, RAY HARING, JASON RAZAVI, JEFF APRILL. MOTION APPROVED.**

**H. OLD BUSINESS:** None

**I. COMMENTS FROM THE CHAIR:** Jeff said they had a very good discussion and because the guest house is not a short term rental that helped his decision for approval.

**J. COMMENTS FROM ZBA MEMBERS:** All members agreed it was a tough decision.

**K. ANNOUNCEMENTS:** Staff cancelled the July meeting because she did not receive any applications. There will be a new Planner/Zoning Administrator starting July 1, 2021 but she will still be around to finish up some items and assist.

**L. PUBLIC COMMENT:** None

**M. ADJOURN: MOTION BY JIM O'ROURKE , SECONDED BY RAY HARING TO ADJOURN MEETING AT 8:15 PM. ROLL CALL VOTE: AYE-RAY HARING, JASON RAZAVI, JEFF APRILL, JIM O'ROURKE. MOTION PASSED.**